CHAPTER-II

Status of Women in Indian Constitution

After attaining independence in 1947, India had an onerous task of social reconstruction, economic development and political awakening to be able to ensure justice and equality to all its citizens. The framers of the Constitution of India, which amongst others had prominent women like Sarojini Naidu, Hansa Mehta, Durgabai, Renuka Ray and Malti Chowdhary as its members, were aware of the social disabilities and inequalities that existed and the Constitution of the country given equal right to all its citizens and all of them are equal before law.¹

Constitution of India was implemented on 26 January 1950, guarantees equal right to women, without any discrimination based on sex.² Thus India became a sovereign democratic republic. The Constitution has adopted the parliamentary form of government on the British pattern. It assured liberty, equality, fraternity and justice to all citizens of India.³

Democracy has come to be associated with a set of ideals as well as a form of government. The democratic ideal was accepted precisely because the conception was that all citizens equally had a claim to self-direction, although regulated in some cases for the common good. Thus, the thinking arose that there should be equality of opportunity in education, equality between sexes not only in political matters, but also in regard to opportunity for social advance. Political matters include the voting right and the right to be voted to office, legal rights to property, etc., economic matters included the right to employment, equal pay for equal work, opportunity for career advancement, etc., social rights include equality of opportunity in education when it is
regarded as of crucial significance in the context of development at all stages. When the democratic ideals are accepted, it goes without saying that liberty and equality are to be regarded as accepted values in all spheres of community and social life. \(^4\)

Before we talk about the special provisions relating to women in our Constitution we have to bear in mind the prospects, which induced our Constitution makers to provide these special articles. The prospective which our politicians and law-makers of India were reflected or incorporated in the Preamble of the Constitution. Preamble is the theme of statute as like ‘face is the index of mind’. The Preamble of the Constitution refers to ‘we the people of India, do hereby Adopt, Enact and to give to ourselves this Constitution, which means male female and resolves to ‘all’ citizen of equality of status and opportunity and liberty of thought and expression, besides, social economic and political justice’. The statement of eminent legal experts of Lucknow University V. N. Shukla in his explanatory book on ‘Constitution of India’ about the Preamble as under:

The Preamble of the Constitution sets out the aims and aspirations of the people of India and these have been translated in the various provisions of the constitution. The objectives before the Constituent Assembly were to constitute India into a sovereign democratic republic and to secure its citizens justice, equality and fraternity. The ultimate aim of the Constitution makers have a welfare state and an egalitarian society projecting the aims and aspirations of the people of India, who made the extreme sacrifice for attainment of the country’s freedom.
The above statement of the legal expert make us to understand that our country is ruled on the principal of sovereign democratic republic with view to establish a welfare state which will make endeavour to provide its citizens with justice, equality and brotherhood. When the basic and Fundamental Principle of government is democratic republic then rights of female population can not be under-minded. Because in democracy population play an important role and our Constitution does not give any right to any authority to discriminate population based on sex. Thus women population have a significant role in democracy. But to make the democratic state functioning smooth and progressive, women should be capable to discharge their responsibilities properly in democratic role. Therefore, they need to be properly developed side by side with male population.

In this context our Constitution makers have taken considerable efforts to examine their position in society of the past and present exhaustively and then determined certain ways and means to equalize them in future to male and laid down certain special provisions in the Constitution. These provisions are following:

(1) Equality before law. (Art. 14)
(2) Prohibition of discrimination on ground of religion, race, caste, sex or place of birth. (Art. 15)
(3) Equality of opportunity in matters of public employment. (Art. 16)
(4) Protection of certain right regarding freedom of speech, movement, religion etc. (Art. 19)
(5) Protection of life and personal liberty. (Art. 21)
(6) Prohibition of traffic in human beings and forced labour. (Art. 23)
(7) State to secure a social order for protection of welfare of the people.
(Art. 38)

(8) Right to work, to education and to public assistance in certain cases.
(Art. 41)

(9) Provision for just and humane conditions of work and maternity relief.
(Art. 42)

Article 14 of the Indian Constitution ensures equality before the law “the state shall not deny to any person equality before law or equal protection of the laws within the territory of India.” One of the prominent legal experts of English law has explained the legal concept of the word ‘equality’ as follows:

“with us every officials, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without any legal justification as any other citizen.”

The Constitutional experts have constructed the Article with guiding principles that, all person and things similarly conditioned shall be treated alike both in privileged and liabilities imposed. The above principles guide us to conclude in the context of women’s position before law equal to that of men. To bring change in the status of women in modern age our democrats have consider the system of law in the administration of justice giving equal rights, to be treated alike with men, so that the population of the country become self conscience and developed.

Now-a-days the position of women even without any special privilege in politics is far better than that of past, when there was no such law on Indian land. However, the laid down principles of the apex court that, equal treatment to unequal is as bad as unequal treatment to the equals. The rule of law under
Article 14 is that, like should be treated alike and unlike should be treated differently. As a matter of fact, all persons are not alike or equal in all respects. We can infer very well from the guiding principles of justice that women of this country cannot be always treated alike even with women, because the circumstances they live in are not the same with all. But they can avail similar rights with men even, if the circumstances are the same.

Under the Article 15 of the Constitution, law has been framed to deter discrimination of citizens by the government’s executive, judiciary and legislative based on religion, race, caste, and sex or place of birth. The Second Clause of the Article is to remove any restriction, disability and liability to approach any place of public entertainment public places maintained wholly or partly out of the public fund and dedicated to use of public based on religion, race, caste, sex etc. This law implies that the women have no disability or restriction in approaching the public place of entertainment and use of public property. According to this law ‘women have the same rights as that of men’. This right has made the women to feel equal to the status of men, as there is no bondage on their movement and use of public places. Article 15 however has provided a couple of exceptions in its application. Article 15(3) allows “the state to make any special provision for women and children.” It was considered to be a matter of controversy whether provisions of Article 15(3) can be invoked for giving rights to women for securing political rights. The Supreme Court in the beginning ruled that the general prohibition against discrimination in Clause (1) of Article 15 also extends to political rights and therefore, the umbrella of protective discrimination can be used to secure political rights to the women. Thus it is clear that sex is a valid ground for discrimination in favour of women and hence will not be violative of Article
15(1) keeping in view provision of Article 15(3). In Dattatrays Motiram Vs. State of Bombay,11 Section 10(1) Bombay Municipal Borough Act 1925 providing for reservation of seats for women in the election to the Municipality was challenged. It was argued on behalf of the petitioner that discrimination in favour of a particular sex is permissible provided it is not only on the ground of sex and should also be based on other considerations. It was also argued that Article 15(3) must be read to mean that only those special provisions for women are permissible which do not result in discrimination against men. The court while rejecting this argument observed that if that was the object of enacting Article 15(3), then Article 15(3) need not have been enacted at all as a provision to Article 15(1). Therefore, as a result of the joint operation of Article 15(1) and 15(3), “the state may discriminate in favor of women against men, but it may not discriminate in favour of men against women. Thus, the legislation does not offend against Article 15(1) by reason of Article 15(3)” 12

Under Article 16, states explicitly that “no citizen shall, on ground only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the state” 13 Women constitutes nearly half of the population and no country can afford to ignore the contribution of women folk. After independence the role of women has enormously changed. They are working in offices, in organized and unorganized sector. They also work as labour to pull up their family. The present position is that one third of the labour force is composed of women. The working conditions and service conditions for women are not satisfactory. They are discriminated in the matters of employment, service conditions and payment of wages.
In Labour Union Vs. International Franchise, a service rule in the International Franchise Company requiring unmarried women in a particular department to resign on getting married was challenged. The Supreme Court rejected the writ petition on the ground that the company was not bound by Fundamental Rights because the company is not a state within the meaning of Article 12 of the Constitution. But at the same time the court held that the rule should be abrogated in the interest of social justice. A judgment of the Supreme Court in 1979, C. B. Muthamma Vs. Union of India, contains some indication of the application of the strict scrutiny standards in the sphere of public employment. The Indian Foreign Service rules which required that a woman member of the service should obtain the permission of the government in writing before her marriage is solemnized and said that no married woman shall be entitled as of right to be appointed to the service were branded by the court as a 'hangover of the masculine culture of manacling the weaker sex.' The Court observed that the requirements of certain types of employment, the sensitivities or handicaps of either sex, and the peculiarities of societal factors may warrant selectivity and differentiation, but save where differentiation is demonstrable, the rule of equality must govern. Applying this standard, the court invalidated the impugned Indian Foreign Service rules. The case was debatable because, at the time of hearing, an undertaking was given by the government that the rules would not be applied, as they were to be deleted.

In Air India Vs. Nargesh Meerza the Court has to grapple with the problem of gender discrimination posed in the challenges to statutory regulations made by Air India, (India’s national carrier) which imposed these disabilities on air hostesses: (a) they were not allowed to marry within four years from the date of their entry into service, (b) their services were
terminated on their first pregnancy and (c) the age of retirement of air hostesses was 35 years, extendable to 45 years at the option of the managing director as against the retirement age of air flight pursers at the age of 55 or 58 years. The Court upheld the first restriction taking 'into consideration an overall picture of the situation and the difficulties of both the parties.' The Court in striking down the second and third disability ruled that it was manifestly unreasonable and arbitrary and "was proof positive of denigration of the role of women and a demonstration of male chauvinism". Air India proposed new regulation under which only an unmarried woman on first pregnancy would have to retire from service was characterized as wholly unreasonable because it failed to 'take into consideration cases where an women becomes a victim of rape or other circumstances resulting in pregnancy by force or fraud for reasons beyond the control of the women' and 'the distinction of first pregnancy of a married woman and that of an unmarried woman does not have any reasonable or rational basis and cannot be supported'. Significance of this judgment is that though the court ruled that the classification between air hostesses and the assistant flight pursers in respect of their service conditions was valid it nonetheless struck down certain service condition following the Royappa Principle as violation of Article 14 on the ground that they were arbitrary.

The rights granted under Article 19 of the Constitution make endeavor to improve the status of women to equate with men. The personal laws in force in Indian system of jurisprudence, the ancient customs and traditions did not permitted women alike men to freedom of speech, from association and move freely.
Article 21 of the Constitution provides protection of life and personal liberty. The Article reads as under “no person shall be deprived of his life or personal liberty except according to procedure established by law”.\(^{21}\) Article 23 of the Constitution provides for rights against exploitation and prohibition of traffic in human beings, begar and similar forms of forced, labour. Such prohibition not only fulfils that pledge made by our country as one of the original signatories to the United Nation Charter but also helps in making specific provisions against exploitation of women for prostitution, forced labour, etc., by the privileged and mighty. The Immoral Traffic Prevention Act 1956 and The Bonded Labour System (Abolition) Act 1976 fall within this field.\(^{22}\)

Article 38 of the Constitution lay down that “state shall strive to promote the welfare of the people by securing and protecting social order in social justice, economic and political life and strive to minimize the inequalities in income, status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations the inequalities have not yet been removed”.\(^{23}\) Article 39 of the Constitution apart from directing the state to work for the socio-economic betterment of society and provides four specific directives for women:

1. Men and women equality have the right to an adequate means of livelihood. [Art. 39 (a)]

2. There is equal pay for equal work for both men and women. [Art. 39(c\&d)]

3. The health and strength of workers men and women and the teen age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength. [Art. 39(e)]
4. Make provision for just and humane conditions of work and maternity relief. (Art. 42)²⁴

Under Article 41 of the Constitution to improve the condition of citizens. According to this Article "the state is supposed to make effective devices for citizens for securing the right to work, right to education and public assistance in cases of unemployment, old age, sickness and disablement. According to this provision, we can conclude that when right to work and right to education have been the part of directive principles of state policy".²⁵

Under Article 42 of the Constitution lay down the state shall make provision for securing just conditions of work and for maternity relief".²⁶ There is yet another provision worth mentioning, that is Article 44, which provide for Uniform Civil Code (UCC). It emphasizes that the need for codifying personal laws of different communities and evolving Uniform Civil Code. This would certainly help in the elimination of discriminatory provisions in personal laws codification of personal laws pertaining to 80 percent of the population of India, that is, majority community and Special Marriage Act of 1954 is the first steps in this regard. The policy of the government is to bring uniformity in communities as and when the demand comes from minority communities themselves. As the Parsi Community came forward with such a demand, personal law relating to them has been amended to provide equal rights to men and women and another bill is pending before Parliament.²⁷

Article 51A imposes certain Fundamental Duties on every citizen of India. Article 51A(e) provides that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women. Thus, a woman can
aspire to the highest office of the state and is free to choose any form of education and training in order to secure a career of her choice.

Article 325 and 326 introduce adult franchise without distinction of sex. After India became independent, the status of women has changed altogether. The different laws were forced in different provinces before 1947. Under the leadership of Pandit Jawaharlal Nehru, the first Prime Minister of India, B. N. Rao Committee was formed to work out the necessary changes in society. The members of the committee toured the four corner of the country and obtained the opinion of the people based on their recommendation in 1955, some important acts were passed. The Special Marriage Act, Hindu Marriage Act, Hindu Succession Act and Maintenance Act were okayed by the Parliament.

After commencement of the Constitution of India government had made some positive efforts in Legislative and Executive fields to uplift the socio-economic and political status and position of women. Their success depends upon their true spirit. The Doctrine of Protective Discrimination express Constitutional mandate and Legislative intent in our legal system but its real efficacy lies in its live and dynamic interpretation of the facts and circumstance of individual cases and precedents to co-ordinate the freedom and protection, discrimination and non discriminations for the welfare of women. It is interesting to see that the different interpretation of the principles have come in due to its application to different subject matters related to women. The Indian Judiciary to certain extent has taken a lead in securing socio-economic justice for women. Today as far as Legislation is concerned with women are marching towards liberty and equality. The National Commission for Women
(NCW) has taken many steps, introduced several bills in Parliament from time to time towards eradication of social evils. Some of the significant enactments are mentioned here.\textsuperscript{31}

**Matter relating to Admission:**

Education is a part of the development of the personality of a woman and is essential for her. In early cases some High Courts allowed discrimination in matters of admission to educational institutions on the ground of sex only. In Anjali Roy Vs. State of West Bengal,\textsuperscript{32} the petitioner, who passed her intermediate in second division applied for third year (B.A) class with honours on economics, was refused admission by the Principal of the college, which was co-educational institution. Anjali Roy was denied admission in the co-educational college under the orders of the Director Public Instruction of the government of West Bengal. She requested the petitioner to get herself admitted in the newly established Women’s College, and offered her the facilities for attending the classes in that institution. But requested was not accepted. The petitioner challenged the orders of the Director Public Instruction as arbitrary, malafide and unreasonable. The hon’ble High Court of Calcutta dismissed the writ petition holding that the order prohibiting the admission of the girl students to the former co-educational institution was with the intention to make the girl students to take admission in Women’s College so that the same could be popular and well established and thus, become a self sufficient. This was thus, a special provision as contemplated by Article 15(3) for the benefit of women and in consequence the provision of Article 51(1) was not available for this. It was further held that Article 15(1) was of wider implication as compared to Article 29(2) and prohibited discrimination on the ground of sex on all matters and so it
included discrimination in matters of admission into educational institutions with the result that Article 15(1) should control Article 29(2).

In University of Madras Vs. Shanta Bai the respondent was refused admission to the college by the Principal in pursuance of the directions given by the university not to admit women into the college. The respondent’s contention is that these directions were opposed to Section 5(1) of the Madras University Act 1923 and that they were also repugnant to Article 15(1) of the Constitution in that they discriminate against her and therefore, void. Three contentions were raised by the university in this appeal. These were:

Article 15(1) prohibits discrimination only by the state, the University of Madras is not a state and its directions were, therefore, unaffected by the operation of Article 15(1)

(a) The right of a citizen to get admission into an educational institution is governed not by Article 15(1) but the Article 29(2) and the Article does not prohibit any restriction based on the ground of sex.

(b) The directions given by the University do not deny the right of women to be admitted in college, but only regulates the exercise of that right and that having regard to the nature of the right, the restrictions are reasonable and not discretionary.

The Court decides all the three contentions in favour of the University. The Court observed that: firstly, University is not a state, because it is not maintained by state. Secondly, the combined effect of Article 15(3) and Article 29(2) is that while men student have no right of admission to Women’s Colleges, the right of women’s to admission in other colleges is a matter within the regulation of the authorities of those college. Article 29(2) is a special article dealing which
admission in educational institutions and is the controlling provision when the question relates to the admission to colleges. As in Article 29(2) word sex has not been used, stet can deny admission to women in men's educational institutions. Thirdly, the direction of the University syndicate is based on the report of the University Commission, 1945 appointed by the state government on the state of higher education and its progress in the state of Madras, which pointed out that there is no sufficient number of women's college to accommodate all those who want to receive higher education. Co-education has become inevitable and unless that is properly controlled, is night result in evil and not good. The syndicate of the University requires that colleges, which seek permission to admit women students, should provide the necessary facilities for them. In fact there is no regulation refusing admission to women students and it is the colleges that are refused permissions to admit women, when they do not provide sufficient facilities.

With due to respect the judgment is based on eth following erroneous considerations. Firstly, the High Court interpreted Article 12 in very restricted and technical sense. When it technically observed that University is a state aided institutions and is not maintained by the state and the only if it is state maintained by the state and the educational institution will be within the purview of Article 15(1) only if it is state maintained and not otherwise. Secondly, the Court by the applying the rule of interpretation special law should be preferred over general law gave overriding effect to Article 29(2) on the basis that is a special Article relating to the admission to colleges. Thirdly, the High Court justified discrimination keeping gin view the report of fact finding body on which the rule made by the syndicate was based, can not be a legal criteria for allowing discrimination. Fourthly, for want of adequate facilities, the
Fundamental Rights conferred on women cannot be denied because state itself is responsible for the by creating facilities for male students and in failing to create equal facilities for women. It would have been better if the Court had directed the state University to create equal facilities for both male and female colleges.

In P. Sagar Vs. State of Andhra Pradesh,\textsuperscript{35} the rules for selection for admission to Medical Colleges in Andhra Pradesh and Telangana Area (G.O. Ms 1135 and 1136, Health Housing and Municipal Administration Development dated 16\textsuperscript{th} June 1966, rules 5 and 6, providing for reservation of 30 percent seats to women candidates was challenged on the ground that it is meant for those who can not come up in open selection and that the procedure sought to be adopted by the government in bringing all women candidates into the reservation quota without there being tested for open selection is uncalled for and unwarranted under rules and is, therefore illegal. The High Court observed that the contention raised by the petitioner ignores the provision of Article 15(3) which is an exception engrafted to Clause (1) of the said Article. Thus, in view of Article 15(3) reservation for women cannot be assaulted.\textsuperscript{36} Similarly, the reservation for women, sportsmen, etc., admit General Categories and do not confine them to any particular class or caste nor offend the provisions of Article 15(1) and Article 29(2) of the Constitution.\textsuperscript{37} In Padmraj Samerandra and others Vs. State of Bihar and another\textsuperscript{38} allotment of some seats for girl students in medical colleges was challenged on the ground that it is solely based on sex. The Court while justifying the allotment of seats for girl students observed that, firstly allotment of seats is not a reservation in the strict sense of the term. It is an allotment of the source from which the seats have to be filled, secondly, keeping in view the requirement in the state of a large number of lady doctors and the mental aptitude and psychological background of lady patients for
treatment of gynecological diseases and obstetric services by lady doctors, makes the allotment reasonable. Thus it cannot be said to be discrimination on the ground of sex alone.\textsuperscript{39}

**Matter Relating to Labour:**

The framers of the Indian Constitution were conscious of the practice of forced labour prevalent in the country. In their view it constituted an ugly and shameful feature of our country. With a view to obliterate and wipe out this practice incorporated Article 23 in the Chapter on Fundamental Rights. Article 23 intended to eradicate the practice of forced labour and is enforceable against any person indulging in such practice. Article 23 strikes all forms of forced labour. It includes in its sweep the exploitation of poor and weaker sections of the society including women by socially or economically powerful sections of the community.\textsuperscript{40}

There was a common belief even after independence that women are physically weak so they should be paid less than their male counterparts for the same piece of work. It was ensure by enacting Article 39(d) of the Constitution that there is equal pay for equal work for both men and women. In order to implement Article 39(d) Parliament enacted Equal Remuneration Act 1976. The Act intended to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex against women in the matters of employment and for matters connected therewith. In Sanjit Roy Vs. State of Rajasthan,\textsuperscript{41} the Supreme Court directed the state government not only to pay minimum wages but also to pay wages in accordance with the principle of equal pay for equal work to men and a women workers engaged in famine relief work. The landmark
decision on this point was delivered by the Supreme Court in M/s Mackinnon Mackenize and Co. Ltd. Vs. Audrey D. Casta. In this case the company was paying to lady stenographer remuneration at the rates less than the remuneration, which was being paid to the stenographers of the male. It was argued on behalf of the company that the different in pay scales was due to settlement between the company and the union of the workers. The Supreme Court directed the company and the lady stenographers and male stenographers are entitled to the equal remuneration for doing the same work or work of similar nature. The Court pointed out that the settlement couldn’t be a ground of discrimination in matters of payment of wages. It was also argued on behalf of company that it is not in a position to pay equal remuneration to all. The Court while rejecting this argument observed that the applicability of the Act does not depend upon the financial ability of the management to pay equal remuneration. The Court also pointed out a woman who works during day time can not claim equality with a man on higher basic rate for working in nights. Similarly women cannot claim equality in pay for the works which women may not be able to undertake.\(^{42}\)

Thus different acts pertaining to welfare of women worker state Government/Union Territories were requested to set up Women’s Cell in their respective states. The state governments of Andhra Pradesh, Bihar, Gujarat, Madhya Pradesh, Orissa, Karnataka, West Bengal, Uttar Pradesh and Delhi have set up such cells. In the state of Assam, the functions of the women cell are being looked after by Research Cell.\(^{43}\)
Mater related to Matrimonial:

India is a country with rich culture and heritage. Secularism has been one of the features of Indian life from the time immemorial. Perhaps India is the only country in the world, which permits persons belonging to different religions to follow their own personal laws based on the religion. Thus in respect of personal matters like marriage, divorce, succession, adoption, and maintenance, different personal laws are followed, depending on the religion of the person. This gave rise to different marriage laws, succession laws and divorce laws applicable to different religions like Hinduism, Islam and Christianity.

The Special Marriage Act provides for a Civil Marriage without any religious significance. According to Section 4 of the Act, two persons of any religious persuasion, provided they are not within the degrees of prohibited relationship or are not married to any other person under any other religious ceremony, and have both reached the age of majority may be married under the Act.

According to Section 5 of the Special Marriage Act, for a marriage to be solemnized, the parties must give notice in writing to the marriage officer of the district in which at least one of the parties has been living for not less than thirty days. This notice is displayed in some prominent place in the marriage registry office. The marriage is to be performed and registry not before thirty days, but within three months of this. The marriage is registered by the marriage officer in the presence of three witnesses, and recorded. A certificate of marriage is then issued to the couple. Section 7 of the Act provides that any person may object to the marriage being performed during the thirty days
period of notification on ground that the marriage would be illegal on grounds covered by the Act, and only upon receipt and verification of such objection the marriage officer may refuse to perform the marriage. In verifying this objection, the officer has full powers, equivalent to a court, to demand evidence and witness and make suitable enquiries.

Separation/Divorce:

In addition to all other grounds for separation or divorce, mutual contest is accepted as valid. In case the spouses are living apart for a period of one year, a joint petition may be filed. After six months they have to again make the same petition and then the divorce is final. The six months period is given to them to change their minds. In case of marriage between a member of Hindu joint family and Non-Hindu occurs, the first party ceases to be member of the said joint family. Where both parties to the marriage solemnized under this Act, are Hindu shall continue to be members of other respective Hindu joint families. This was added by Marriage Laws (Amendment) Act, 1976. It is a non-secular and a step backward from the uniformity, which had been achieved by those marrying under this act. Under this act as now amended [Section 10(1)] the grounds on which a decree for judicial separation may be passed are identical to that required in respect of a decree for divorce.45

Marriage:

In India, different set of laws and rules are applied in respect of marriage depending on the religion followed and practiced by the individuals. Thus the Hindus are governed by the Hindu Marriage Act 1955, the Muslim by the tenets of Holy Quran and the Christians are governed by the Christian Marriage Act 1872 and other laws.
Position of Women before the Hindu Marriage Act 1955:

Prior to 1955, that is before the enactment of the Hindu Marriage Act 1955, the Hindu Marriage was considered purely to be a sacrament, by all the schools. There were eight forms of marriage among Hindus, out of which four were approved forms and the other unapproved. The approved forms of marriage were Brahma, Daiva, Arsha and Prajapathy. The unapproved marriages were Asura, Gandharva Rakshasa and Paisacha. In due course of time only two forms remained in practice viz. Brahma in the approved form and Asura in unapproved form. In the former type, women were given as a gift by her father to his son-in-law i.e., the husband of the women. In the latter type, it was considered as a sale by the father to the son-in-law, ‘Kanya Sulkam’ was consideration for such sale. Another difference was that in a Brahma form of marriage when the woman died, her property devolved upon the legal heirs of the husband, in the absence of the husband and children.

Positions of Women after the Hindu Marriage Act 1955:

The Hindu Marriage Act 1955 was the first codified to Hindu laws. The Act does not specially provide for any form of marriage. It made the marriage more consensual and secular than religious. It is no more consider the marriage as a ‘Samskara’ as considered by Dharma Shastras. The marriage is solemnized as per the compulsory ceremony prevalent in the community to which the bride and bridegroom belong:

The Hindu Marriage Act 1955 (Hereinafter referred to as the Act for convenience) amended and codifies the Hindu Law relating to marriage. The Act underwent several amendments by the Hindu Marriage Law Amendment
The Hindu Marriage Act has made elaborate provisions as to the conditions for a Hindu marriage, ceremonies, registration legitimacy of children, nullity of marriage and divorce etc. Even though almost all the provisions are equality applicable to Hindu husband and wife, a few provisions may be discussed to understand the changed position of the Hindu women after the act came into force.

**Conditions for a Hindu Marriage (Section 55):**

Section 5 of the Act lays down the conditions for a valid Hindu Marriage. They are

1. Monogamy
2. Sound mind
3. A minimum age of 18 years for the girl (bride) and 21 years for the boy (bride groom)
4. The parties are not within prohibited degrees of relationship and
5. The parties are not sapindas to each other.

The last two conditions may be waived if there is a custom or usage governing each of the parties to the marriage permitting the same.

**Abolition of Guardianship in Marriage:**

Before 1978, Section 6 of the Act provided that the consent of guardian was necessary for a bride, if she was below the age of 18 years i.e., minor. However the Child Marriage Restraint (Amendment) Act of 1978 deleted this section in view of the fact that the age of bride should be at least 18 years at the
time of marriage. Therefore when the bride has already completed 18 years of age, the question of consent of guardian would not arise, as she would be a major.

Ceremonies:

There is no discrimination between the bride and bridegroom with regard to the ceremonies, in view of Section 7 of the Act.

Registration:

The provisions of Section 8 dealing with registration of a Hindu marriage are equally applicable to the bride and bridegroom. There is nothing in the Act to suggest that registration of a Hindu marriage is essential and that failure to do so renders the marriage void.

Restitution of Conjugal Rights:

This is a remedy provided to a spouse aggrieved by the desertion of the other spouse, without any reasonable cause. Section 9 of the Act specifically provides that when either the husband or the wife has withdrawn from the society of other without reasonable excuse, the aggrieved party may initiate legal proceeding for decree of restitution of conjugal rights. This is a right available to both the spouses i.e., wife and husband equally. This provision has been challenged as unconstitutional and as violative of Articles 14 and Article 21 of the Constitution in Sarita Vs. Venkatasubbaiah. Justice P.A. Chowdhary of the Andhra Pradesh High Court expressed the view that Section 9 offends of decree of Article 14 and Article 21. The learned Judge held that the effect of decree of restitution of conjugal rights is to coerce the unwilling party to have sex against that person’s consent and free will thus allowing one’s body to be
used as a vehicle for another human being's creation. Section 9 was held to violate the right to privacy of the individual also.

However, the Supreme Court overruled the above decision of the Andhra Pradesh High Court recently in the case of Saroj Rani Vs. Sudarshan by holding that in the privacy of home and married life, neither Article 21 nor Article 14 has any place. In India, Section 9 affords a remedy to the aggrieved wife against the husband deserting her without any reasonable cause. If the court passes a decree in her favour, it can be executed as per the procedure contained in the Civil Procedure Code.

**Divorce:**

The expression divorce means:

(a) Judicial declaration dissolving a marriage in whole or in part,

(b) Any formal separation of men and women according to custom as among universalized tribe,

(c) To break the contract of marriage between oneself and one's spouse.  

The grounds common to both the husband and wife are mentioned in Section 13(1). There are:

(a) Other spouse living in adultery.

(b) Cruelty of the other spouse.

(c) Desertion by the other spouse.

(d) Conversion by the other spouse to other religion.

(e) Unsound mind of the other spouse.

(f) Virulent and incurable form of leprosy to other spouse.

(g) Other spouse suffering from venereal diseases.
(h) Renunciation the world by the other spouse and

(i) Presumption of death of other spouse.

**Ground for Judicial Separation:**

The ground for judicial separation for both the husband and wife are the same as the grounds for divorce contained Section 13(1) of the Act. They are Adultery, Cruelty, Desertion, Conversion, Unsound mind, Veneral diseases, Incurable leprosy, Renunciation of the world, Presumption of death and failure to comply with a decree of restitution of conjugal rights etc. All these grounds are available equally to the husband and wife.

**Hindu Wife’s Special grounds for Judicial Separation:**

Apart from the ground aforementioned, a Hindu wife may invoke any of the following grounds exclusively available to her viz.,

(a) Remarriage by husband

(b) Husband found guilty of rape Sodomy or bestiality

(c) Non-resumption of co-habitation inspite of a decree for maintenance of wife and

(d) Option of puberty i.e., at the option of the wife if her marriage was performed before her 15 years of age and she repudiates the marriage after attaining the age of 15 years but before the reaches 18 years of age.

These special grounds have been provided for Hindu wife exclusively by the Marriage Laws (Amendment) Act 1976, which amended Section 10 and 13 of the Act. 49
Maintenance Pendent lite and Expenses of Proceedings (Section 24):

In any proceedings under the act like the petition for restitution of conjugal right judicial separation or divorce where the respondent spouse has no independent income, sufficient for self-support and also for paying the necessary expenses, the other spouse may be directed by the court to provide maintenance and legal expenses.

Permanent Alimony and Maintenance:

The Indian Divorce Act 1869, Parsi Marriage and Divorce Act 1936 and the Special Marriage Act 1954, provide for permanent alimony and maintenance in favour of the spouse. Section 25 of the act makes a similar provision. Under this provision of the court is empowered to grant permanent maintenance to either spouse, at the time of passing the decree or any time thereafter at the instance of a spouse who in not able to maintain himself or herself. However maintenance can be claimed by her under Section 18(1) of the Hindu adoptions and maintenances Act or under Section 125 Cr.P.C.50

Custody of Children:

A Hindu wife whether living with the husband or not, whether divorced or not is equality entitled to the custody of her minor children, of course subject to the satisfaction of the court by the virtue of Section 26 of the Act. Even though there are no certain guidelines as to the right to custody of the minor children, the courts held that the custody of a child below 5 of years of age shall be with the mother unless special circumstance injurious to the child’s interest are shown.51
Muslim Women and Marriage:

Islam does not distinguish between the two halves of the sphere of humanity. In order to effect a perfect male-female equilibrium in human society, the Quran speaks in numerous verses of women especially. It even promulgates a special chapter under the title ‘The Women’ (Surah-al-Nisa,) major parts of Surah-al- Nisa deal with ‘Women and the Family’.

Muslim marriage is regarded as a contract between a Muslim men and women, which has for its object procreation and legitimization of children. It is a civil contract and no priest or Qazi is necessary for its performance. The Shia law recognizes two kinds of marriages, namely (1) permanent and (2) temporary or Muta. Temporary or Muta marriages are void according to Sunni law.

Essential of Marriage:

The legal essential to the validity of a Muslim marriage is that there should be a proposal made by on behalf of one of the parties to the marriage and an acceptance of the proposal by or on behalf of the other in the presence and hearing of two male or one male and two female witnesses. There must be on evidence that the husband agreed to the dower and the wife gave her consent constitutes sufficient proof of proposal and acceptance.

Proof of Marriage:

The fact of marriage may be proved by direct evidence by calling witnesses present at the time or producing Nikahnama signed by the parties. Where there is the recorded document, which asserts that a marriage ceremony had in fact taken place on a particular date prima facie, such a statement ought
to be accepted unless it can be shown by independent evidence to be false.\textsuperscript{57} Where direct proof is not available indirect proof may suffice.\textsuperscript{58} It is open to a court upon proof of a marriage to hold as proved the subsistence of that marriage on later date unless and until it is disproved.\textsuperscript{59}

**Ground on which Marriage Prohibited:**

A marriage between two Muslims is absolutely prohibited.

(1) On the ground of polyandry of the women.

(2) On the ground of consanguinity (blood relationship).

(3) On the ground of affinity (through earlier marriage) and

(4) On the ground of fosterage.

**Temporary and Relative Impediments:**

(1) On the ground of unlawful conjunction.

(2) On the ground of polygamy.

(3) On the ground iddat period.

(4) On the ground difference of religion.

(5) On the ground absence of witnesses and

(6) On the ground of divorce (where the divorced female is sought to be remarried by the husband).

All the above-mentioned prohibitions are not absolute. Thus in the case of unlawful conjunction i.e., where a Mohammedan male of Sunni is prohibited to marry at the same time two wives who are so related each other by blood relationship, affinity or fosterage that if one of them were a male they
could have been lawfully married if the husband divorces one, the marriage with the other is valid.

Similarly a Mohammedan male is prohibited to marry a woman who is undergoing ‘Iddat Period’ after the dissolution of her first/earlier marriage. Here the ‘Iddat Period’ varies depending on the cause of dissolution viz. death of husband or divorce etc. A Mohammedan female is prohibited to marry a Non-Mohammedan. These impediments are only temporary and can be removed by a subsequent supervening development like divorcing one of the wives, expiry of iddat period and conversion to Islam etc. Any Muslim marriage contracted ignoring these impediments are irregular (Fasid) which can be regularized by certain actions or developments.\(^{60}\)

**Mehr:**

Mehr is the dower or from of bride price paid by the man to the woman he marries. It is meant to protect her in case of abandonment in favour of other women, divorce, or neglect by maintaining her. According to Sunni Law, if the time and mode of payment have not been specified, it is deemed payable promptly, in the part and partly deferred, the proportion of each payment being regulated by various factors such as custom, amount of dower and status of the parties. Shia Law, however regards dower as payable promptly, unless otherwise specified.\(^{61}\)

**Muta Marriage:**

A Muta marriage recognize among the Muslims of the Shia sect, is a temporary marriage, its duration being fixed by agreement between the parties.\(^{62}\)
Capacity to Contract a Muta Marriage:

A Mohammedan male of Ithna Ashari sect of the Shias may contract any number of Muta marriage, with a female belonging to Islam, Christianity, or Jewish religion. However a female of Ithna Ashari sect of the Shias has capacity to contract a valid Muta marriage only with a Mohammedan and nobody else of other religion.

Conditions of a Valid Muta Marriage:

In a Muta Marriage, the period of cohabitation and the amount of dower must be specified. The condition of proposal and acceptance should be fulfilled along with the use of the word ‘Tazwig’ or ‘Nikah’ or ‘Muta.’

Legal Effects of Muta Marriage:

The following are the consequences of a valid Muta marriage.

(1) The parties to a Muta marriage will be called the Muta husband and the Muta wife.

(2) A Muta marriage does not give rise to mutual rights of inheritance between the rights to inheritance between the Muta husband and Muta wife. However, this practice can be over ridden by an agreement to the contrary.

(3) A Muta wife is not entitled to any maintenance form the husband

(4) In a Muta marriage, the children born out of this union are legitimate and capable of inheriting from both the parents in the same manner as the off springs of a permanent marriage.
(5) If the Muta marriage is dissolved by the death of the husband, the Muta widow must observe the period of iddat for 4 months and 10 days or till the delivery in the case of pregnancy.

(6) Dower or Mahr must be specified in a Muta marriage.

Thus the status of a Muta wife is very low and insecure, as compared to that of a Muslim wife in a permanent marriage.63

Dissolution of Muslim Marriage (Divorce):

The union of marriage is never meant to be broken under any Personal Law. Firm union of the husband and wife is a necessary condition for a happy family life. Islam therefore, insists upon the subsistence of a marriage and prescribes that breach of the marriage-contract should avoided initially no marriage is contracted to be dissolved in future, but in unfortunate cases the dissolution takes place and the matrimonial contract is broken. A marriage may be dissolved:

(1) By the act of God i.e., due to death of the husband or wife, or

(2) By the husband at his will, without the intervention of a court.

(3) By a judicial decree at the suit of the husband or wife.64

Divorce by the Wife:

Originally, a Muslim wife had no independent right of divorce. She cannot divorce her husband whether she likes or not as her husband may do. Under Muslim Law, divorce by wife is possible only in the following situations:
(a) Where the husband delegates to the wife the right of Talaq (Talaq-e-Tafweez)

(b) Where she is a party to divorce by mutual consent (Khula and Mubarat)

(c) Where she wants to dissolve the marriage under the Dissolution of Muslim Marriage Act 1939.  

(a) Divorce by the Mutual Consent:

Under Muslim Law, a divorce may take place also by mutual consent of the husband and wife, it may take place of any time whenever the husband and wife feel that it is impossible for them to live with mutual love and affection as is desired by God. A divorce by the mutual consents of the parties no such provision before 1976.

(b) Khula:

Literal meaning of the word ‘Khula’ is to take off the clothes. In law, it means divorce by the wife with the consent of her husband on payment of something to him. Before Islam, the wife had no right to take any action for the dissolution of her marriage. But in Islam, she is permitted to ask her husband to release her (as he puts off his clothes) after taking some compensation. Quran lays down about Khula in the following words:

“...and if you fear that they (husband and wife) may not be able to keep within the limits of Allah, in that case is no sin for either of them if the woman releases herself by giving something (to the husband)”.

In leading Case Munshee Buzlul Raheem Vs. Luteefutoon Nissa, the Privy Council described a Khula form of divorce as under:
A divorce by Khula is a divorce with the consent and at the instance of the wife, in which she gives or agrees to give a consideration to the husband for release from the marriage tie. In such a case the terms of the bargain are matters of arrangement between the husband and wife, and, the wife may, as the consideration, release for dynmahr and other rights or make any other agreement for the benefit of the husband.

Mubarat:

Mubarat is also a divorce by the mutual consent of the husband and wife. In Mubarat both parties are equally willing to dissolve the marriage. The essential feature of a divorce by Mubarat is the willingness of both the parties to get rid of each other, therefore it is not very relevant as to who takes the initiative. The divorce by Mubarat is very near to the provisions of divorce by mutual agreement under Section 24 of the Special Marriage Act 1954 (as amended in 1976).  

(C) The Dissolution of Muslim Marriage Act VIII of 1939- Judicial Divorce:

The Dissolution of Muslim Marriage Act was passed in order to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to effect of the renunciation of Islam by a married Muslim woman on her marriage tie. The Act came into force on the 17\textsuperscript{th} March, 1939 and lays down the following grounds of divorce:

(1) The whereabouts of the husband are unknown for a period of four years

(Section 324)
(2) Failure of the husband to provide for the maintenance of the wife for a period of two years (Section 325)

(3) Sentence of imprisonment on husband for a period of seven years (Section 326)

(4) Failure without reasonable cause to perform marital obligations (Section 327)

(5) Impotent of husband (Section 328)

(6) Insanity of husband (Section 329)

(7) Repudiation of marriage by wife (Section 330 and 273)

(8) Cruelty of husband (Section 331)

(9) Any other grounds recognized by Muslim law (Section 332)

Section 4 of the Act deals with the effect of apostasy from Islam of a married Muslim woman (Section 213). It is submitted that the grounds are independent of each other, and on proof of any one of them; a decree for dissolution of marriage can be made.  

Maintenance of Muslim Women:

Under Mohammedan Law, every Mohammedan is under an obligation to maintain his wife, children, parents and other relatives including step relations. Generally maintenance includes foods, clothing and lodging. It varies according to the position and status of the persons concerned.

(i) Wife:

Under the Muslim Matrimonial Law, maintenance is a right of the wife. Under no circumstances, the wife is legally liable to maintain her husband howsoever indigent he may be. If the husband neglects or refuses to maintain his wife without any lawful cause, the wife may sue him for maintenance. She
may also apply for an order under Sections 125-128, Criminal Procedure Code in which the court may order the husband to make a monthly allowance in the whole for her maintenance not exceeding five hundred rupees. It may be noted in this context that the foregoing dissolution pertains to the maintenance of a wife during the subsistence of the marriage only.72

(ii) Maintenance on Divorce:

Maintenance of divorced Muslim women is governed by three sources namely (a) Muslim Personal Law (b) Section 125, Criminal Procedure Codes and (c) The Muslim Women (Protection of Rights on Divorce) Act 1986.

(a) Muslim Personal Law:

The Holy Quran provides for the maintenance of the divorce wife as under:

‘For the divorce women let there be a provision in kindness, this is an obligation for those who are mindful of God’ (Quran Sura ii, Ayath 241). A divorce woman is entitled to claim maintenance from her former husband during Iddat period only.

(b) Criminal Procedure Codes (Section 125):

Under Criminal Procedure Code, Section 125 of Cr. P. C., impose an obligation on the husband to maintain his wife, who includes a divorced wife. The divorced wife includes also that Muslim wife who obtained a decree for dissolution of her marriage under the Act of 1939 Zohra Khatoon Vs. Mohd. Ibrahim,73 However a woman shall not be entitled to maintenance if she has remarried or has received the entire sum due to her on divorce on any customary or personal law or if she surrender her right to maintenance voluntarily.74 But in
Bai Tahira Vs. Ali Hussein, the Supreme Court held that a divorced Muslim wife is entitled to maintenance even if she has already received the whole amount due to under her personal law.

In the case of Mohd. Ahmad Khan Vs. Shah Bano Begum, the Supreme Court reiterated its stands and held that a divorced Muslim woman so long as she has not re-married, is a wife for the purpose of Section 125 of the Cr. P. C. and is entitled to maintenance from her former husband. The Court observed that the right available under Section 125 is a statutory right and remains unaffected and also overrides the provision of personal law if there is any conflict between the two. However the Court observed that there is no such conflict. This judgment in Shah Bano case created much controversy and debate in the recent times.

(C) The Act of 1986:

The Muslim Women (Protection of Rights on Divorce) Act 1986, is the culmination of the controversy created by Shah Bano Judgment. This Act was enacted to negative the law laid down in the case is so far as divorced Muslim women’s claim of maintenance beyond Iddat period is concerned. The main effect of this Act is that a divorced Muslim woman can claim maintenance from her former husband only when the spouses agree and prefers to be governed by the provision of Section 125 to 128 of Cr. P. C., even beyond the Iddat period. The dissolution of marriage may take place in any form such as Talaq, Ila, Zihar, Khula or Mubarat and it may also under the dissolution of Muslim Marriage Act 1939. According to Section 2 and 3 of the Act, the divorced women in entitled to a reasonable and fair maintenance during Iddat period only.
Maintenance after the Iddat Period:

Section 4 of the Act deals with the maintenance of the divorced women who is unable to maintain herself and remains unmarried after the Iddat period.77

Order for payment of Maintenance:

(1) Notwithstanding anything contained in the foregoing provisions of this act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not remarried and is not able to maintain herself after Iddat period, Magistrate may make an order directing such of her relative as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as Magistrate may determine reasonable, proper and at such periods a judge may specify in his/her order:

Provided that where such divorced woman has employed son, the Magistrate shall order such son/daughter to pay maintenance to her, and in the event of any such son/daughter being unable to pay such maintenance, the Magistrate shall order the parents of such divorced women to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.
Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in Sub-Section (I) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate other or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the magistrate to be paid by such other relatives under the second provision to Sub-Section (I), the Magistrate may, by order, direct the State Wakf Board established under Section 9 of the Wakf Act 1954, under any other law for the time being in force in a state, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods a magistrate may specify in his/ her order. According to Section 5 of the Act if on the date of the first hearing of the proceedings under Section 3 which deals with the payment of Mahr or other properties of Muslim woman at the time of divorced, if the divorced woman and her former husband depose in the form of affidavit or declare in writing to the effect that they would prefer to be governed by the provision of Cr. P.C., in these regard, Cr. P.C., is applicable to such maintenance.

In a case of Usman Khan Bahamani Vs. Fatimunisa Begum, the Andhra Pradesh High Court after analyzing the provisions contained in Section 3(i) (a) of the Act and the history of the legislation. The full bench held that the Section 3(i) (a) envisaged the making of reasonable and fair provision and payment of the maintenance to the divorced wife commensurate with the period of iddat.
In Syed Fazal Tangal Vs. Union of India, the Kerala High Court held that the provision of Section 4(2) of the Act directing the Wakf Board to pay maintenance to divorced woman is not violative of Article 26 of the Constitution of India.

(C) Maintenance under the Criminal Procedure Code 1973:

Even though the different personal laws contain different provisions as to maintenance of women, the Code of Criminal Procedure 1973 makes a comprehensive scheme for the maintenance of wife children and aged parents of a man. The provisions are contained in Sections 125 to 128 of the Code. According to Section 125, the following conditions must be satisfied before a wife, legitimate or illegitimate minor child whether married or not or parents claim maintenance from a man; (1) the person must have sufficient means., (2) he has neglected or refused to maintain., (3) the wife, children or parents are not able to maintain themselves. Unless these mandatory conditions are fulfilled to the satisfaction of the court the claimant will not be entitled to claim any maintenance.

Quantum of Maintenance:

A claimant is entitled to claim monthly maintenance from a man but the maximum amount is fixed by Section 125 at Five Hundred Rupees per month only. The Magistrate has the discretion to fix the amount of maintenance subject to the maximum mentioned above depending on various factor like the earning capacity of the man, his status, means and also the status, necessities and conduct of the claimant.
The Commission of Sati (Prevention) Act 1987:

An Act to provide for the more effective prevention of the Commission of sati and its glorification and matters connected herewith or identical thereto, the new Anti-Sati Act, substitutes the various legislation have been operative in different parts of the country with a Central Law that seeks not only to prevent and punish the Commission of the Act itself, but also to make an offence any glorification of the act of sati.

There are provisions in the act to take action against the exploitation of such criminal occurrences either for financial or political purposes. Specifically, the Act makes a criminal offence, equivalent to murder, the abetment or encouragement of a sati or an attempted sati. Such action is liable to sentence of death or life imprisonment; with an appropriate fine. The sati herself is liable to prosecution as suicide, the penalty being a year’s imprisonment with fine. The glorification of sati is defined as the observation of any ceremonies or the taking out of processions in connection with the incidence or practice of sati, the support, justification or propagation of the practice or the arrangement of or participation of an function to eulogize a person committing sati, the creation of a trust or fund or collection of donations for the purpose of a temple or any other structure with a view to perpetuate or honour the memory of a person committing sati, or the performance of any ceremony for the same purpose. Under the Act, all temples dedicated to such practice or persons are to be removed. The penalty for glorification or sati is imprisonment from one to seven years, a fine of Rs. 5,000 to Rs.30, 000 and the confiscation of all assets collected in the name of sati.
Prohibition of Traffic in Human Beings Women:

The state in pursuance of the above provision has enacted the Suppression of Immoral Traffic in Women and Girls Act 1956, which has recently been amended, and now it is known as the prevention of immoral traffic in women and girls Act. This Amendment effected in 1986 and emphasis has now been shifted from 'Suppression to Prevention'. In Nihal Singh Vs. Ram a typical situation came up before the Court, was whether the customs which are derogatory to the Constitutional provisions, should be allowed to prevail and any contract in pursuance of such customs should be upheld. In that case, plaintiff contracted the reposedent to arrange for her son a Dangi woman who could be kept by him as his mistress. Plaintiff paid Rs.4000 to the dependent who sent a girl to her house. The girl lived with the son of the plaintiff for twenty days and went to her village. After that, she never came back. Later on, it was discovered that the girl was not a Dangi by caste. Therefore, the plaintiff claimed her money back. First two trial Courts declare the suit on the ground that the defendant had obtained Rs.4000 from the plaintiff fraudulently invoking Section 65 of the Indian Contract Act. The High Court of Madhya Pradesh reversed the judgment of lower courts. It was declared by Justice Singh T.N. that such contract is violative of the Constitutional injunctions. He observed that:

'Such a contract would not only be viod ab-initio by virtue of Article 13(2) of the Constitution but also there is the Constitutional prohibition of the Article 23. If sale of a woman is considered traffic in human beings', which is prohibited by Article 23 of Constitution, "I do not see how any action based on
a contract, evidencing such a transaction can at all be entertained...it ought to have been dismissed in meantime.  

Maternity Benefit Act and Special Provision in Factories Act, the Mines Act and Plantation their Constitutionality.

Most of the Indian women are illiterate and ignorant of their legal rights and duties, economically dependent on men, socially backward, and politically unenforced. Therefore, in the unequal social order it is not possible to apply equal laws to all alike. Some discrimination or classification has to be made in order to establish in an egalitarian society. Hence, Article 14 is to be understood that it permits reasonable classification.

In Ameerunisa Begum Vs. Mehboob Begum Supreme Court held that a legislature which has to deal with diverse problem arising out of an infinite variety of human relations must necessarily have the power of making special laws to attain particular inject. For the purpose, it must have large process of selection or classification of persons. The Court has declared that women as a class and to remove disability attached to women. Hindu Succession Act 1956 has been passed, to make female property, her absolute property.

The Article 14 of the Constitution prohibits class legislation but permits reasonable classification. The classification must be based on source 'intelligible differentia and should have a irrational nexus' with the object sought to be achieved. Keeping in view the classification and object of the legislation, women can be treated as a class and special laws can be made in their favour. Thus, The Maternity Benefit Act, special provision of the protection and welfare of women under Factories Act, the Mines Act and Plantation Act are valid, when various provision in which women were given
special treatment have been declared valid by the Court. Such discriminatory provisions of law have been declared by the Court as ‘permissible classification’ not violating the principle of equality under Article 14 provides the classification is not arbitrary. The Allahabad High Court made it clear that special provision for women as a class can be made but not to benefit an individual woman.87

**Domestic Violence Act 2005:**

The Protection of Women from Domestic Violence Act 2005, which was pending before the Parliament for many years was passed in the monsoon session of the Parliament in August, 2005 and the President gave his assent on 13 September, 2005 and it became a law. In the first case, under this Act, Tamil Nadu police arrested a man when his wife made a complaint of harassment and he was sent to jail. This Act recognizes domestic as a punishable offence and is not only applicable in the case of the legally married wife but also live in companions, any one living in the household and children. In addition to punishing the man, the Act also provides emergency relief to the victims of domestic violence. This Act provides a more effective protection of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family.

**Provisions of the Act:**

This Act contains 5 Chapters and 37 Sections. ‘Domestic Relationship’ is defined as a relationship between two persons who live or have, at any point of time, lived together in a shared household, whether they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. ‘Domestic
Violence’ is defined in broad terms. It includes any abuse that is physical, sexual, verbal, emotional or economic. Any harassment to meet any unlawful demand for any dowry or other property or valuable, injuries or harms that are physical or mental, insults, ridicule, humiliation and name calling are considered as domestic violence. An aggrieved person covers not just the wife but a woman who is the sexual partner irrespective of whether she is his legal wife or not. One could see that the definitions are broad to include every possibility and all forms of violence.

Chapter IV gives power to the Magistrate to protect the woman not only from Acts of violence but even acts that are likely to take place in the future. The magistrate can ‘restrain the respondent from dispossessing or in any other manner dispossessing or in any other manner disturb the possession of the aggrieved person from the shared house hold’. The Magistrate can ‘restrain the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides.’ The Court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her.

The Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence. The monetary relief granted should be adequate, fair, reasonable and consistent with the standard of living to which the aggrieved person is accustomed. The Magistrate may also order compensation and damages to the injuries, including mental torture and emotional distress.
Chapter V, Section 31 gives a penalty up to one year imprisonment and/or a fine of Rs. 20,000 for an offence. The offence is cognisable and non-bailable and it goes further and says that 'under the sole testimony of the aggrieved person, the court may conclude that an offence had been committed by the accused'.

Need for a New Law on Domestic Violence:

Women and children are often in great danger in the place where they should be safest, within the families. In fact, contrary to this at home they face terror and violence at the hands of somebody close to them. Such victims suffer both physically and psychologically. Violence against women and girls is a global problem which kills, tortures and maims—physically, psychologically, sexually and economically. It is a serious human rights violation which denies women and girls equality, security, dignity, self-worth, and their right to enjoy their fundamental freedom.

India is no exception to this, up to 45 percent of married men acknowledges physically abusing their wives. According to a 1996 survey of 6,902 men in the state of Uttar Pradesh. Divorce rates have gone up from 5 percent in 1980 to 14 percent in 2001. About 1.5 lakh crimes are registered against women every year. Nearly 5 crore women suffer domestic violence at home. Only 2 out of 100 accused are convicted under the existing dowry laws. In rural Karnataka, a study found that children of mother who were beaten received less food than other children did, suggesting that women could not bargain with their households on their children’s behalf. A study in Tamil Nadu and Uttar Pradesh found that women who had been beaten were significantly more likely than non-abused women to have a pregnancy loss from abortion,
miscarriage or still birth. Many men are reevaluating their own role in the family and in society. They are asking themselves why some men are violent, how they can be helped to end their violent behaviour.

In the 1990s several factors contributed to significant changes in domestic violence in many countries. Women successfully campaigned in the international forums and several United Nations Conferences recognized women's rights as inalienable part of Universal Human Rights. As a result of the new awareness generated, law on domestic violence were adopted in many countries. Around 45 countries have adopted specific legislation on domestic violence of which India is one.

**The Implementation of the Law:**

The law envisages setting up a protection officer whose functions are spelt out in the law. Though this officer is appointed by the state governments, he/she will be under the jurisdiction and control of the Court. He/she will be in the Court and monitor the cases of domestic violence. The protection officer will make the Domestic Incident Report on behalf of the Court and make an application for an order for an order on behalf of child. He/she will provide medical services, safe shelter and other requirements. The protection officer is liable for punishment if he/she fails or refuses to discharge his duty.

The services provide play a major part in the implementation of the Act. They are Non-Governmental Organizations who are recognized under the Companies Act or Societies Registration Act. They will make sure that the aggrieved person is provided accommodation in a sheltered home. They are protected under this act and can not be sued for the proper exercise of their duty in good faith.
Strategies for Implementation:

An Act is effective when appropriate strategies are worked out to make the public aware of the Act. The government, voluntary agencies and educational institutions should play a major role in this Act. The government should appoint committed protection officers who will be committed to women empowerment and will work conscientiously. The role of the voluntary agencies would be crucial.

The media should play a pivotal role in influencing and changing social norms and behaviour. The educational institutions should raise awareness about domestic violence, help to improve social responses to domestic violence and change those attitudes and behaviours that tolerate domestic violence in all sections of students. They must develop educational materials for schools and universities that provide the knowledge and skills required to build relationships based on respect and a commitment to non-violence.
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